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JOSEPH F. SPANIOL, JR.
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No. 88-559

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

JOSEPH AZAR,
PETITIONER,
v.

MINISTER OF LEGAL AFFAIRS,
GOVERNMENT OF TRINIDAD AND TOBAGO,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

REPLY OF PETITIONER

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QUESTIONS PRESENTED

1. Does a district court possess Article III case or controversy jurisdiction to ex parte order in behalf of a foreign applicant bank records subpoenaed where there was no Article III case or controversy pending before any court of the United States.

2. Does the Court of Appeals' interpretation of 28 U.S.C. Section 1782 afford foreign persons and governments discovery procedures more advantageous than those available to citizens of the United States, threaten to inundate our courts with requests for pre-litigation discovery, and undermine the right to privacy established by Congress in the Right to Financial Privacy Act?

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ARGUMENT

If the government's argument that "federal courts have inherent authority to issue letters rogatory in aid of their proceedings and to compel the production of evidence in aid of foreign proceedings," (Response p. 5)(emphasis added) is

correct, then the decision of the lower court must be error. This is so because there are no proceedings before any court domestic or foreign to which the subpoena in question could be in aid of.

The government's attempt to analogize a subpoena issued pursuant to 28 U.S.C. Sec. 1782 with a subpoena issued on behalf of a grand jury fails because the grand jury is itself a constitutionally recognized proceeding. Fifth Amendment. Article III was effectively amended to include grand jury proceedings by the passage of the Bill of Rights. By contrast, Section 1782 is merely a procedural mechanism available to assist in the collection of evidence. It is not a substantive right and cannot itself confer jurisdiction in the District Court.

CONCLUSION

For the reasons stated above and in the initial Petition, the decision of the lower court should be reviewed.

Respectfully submitted.

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December 1988